

motion to reopen his case on March 6, 2006 on the grounds that his motion was both time and number barred. That decision was upheld by the BIA on August 31, 2006.

Given that an immigration judge and the Board of Immigration Appeals has ruled on plaintiff's motion to reopen, this Court is without jurisdiction to entertain Plaintiff's claim or request for a preliminary injunction. "[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal". 8 U.S.C. § 1252(a)(5). Moreover, any such petition must be made within 30 days, 8 U.S.C. § 1252(b)(1), and must be made to the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. 8 U.S.C. § 1252(b)(2). Therefore, a petition to the Second Circuit within 30 days of the BIA's decision, not a collateral attack through this Court, would have been the proper means to appeal the BIA's decision.

This Court lacking jurisdiction to entertain defendant's claim, Plaintiff's request for a preliminary injunction is DENIED. In addition, this Court dismisses Plaintiff's complaint for lack for lack of subject matter jurisdiction. The Clerk of the Court is directed to close this case.

It is so ordered.

White Plains, New York

Dated: January 19, 2007

A handwritten signature in black ink, appearing to read "Stephen C. Robinson", written over a horizontal line.

Stephen C. Robinson
United States District Judge